

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

EUDE RIVERA,

Plaintiff,

v.

Case No. 8:19-cv-2337-T-60MCR

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on consideration of the report and recommendation of Monte C. Richardson, United States Magistrate Judge, entered on July 14, 2020. (Doc. 19). Judge Richardson recommends that the Commissioner's decision be reversed and remanded for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g), with instructions to the ALJ to (1) re-evaluate Plaintiff's anemia and cardiomyopathy and reconsider Plaintiff's subjective complaints, (2) re-evaluate Plaintiff's RFC assessment, if necessary, and (3) conduct any further proceedings deemed appropriate. Judge Richardson further recommends that, in the event that benefits are awarded on remand, any § 406(b) or § 1383(d)(2) fee application should be filed within the parameters set forth by the Order entered in *In re: Procedures for Applying for Attorney's Fees Under 42 U.S.C. §§ 406(b) & 1383(d)(2)*, No. 6:12-mc-124-Orl-22 (M.D. Fla. Nov. 13, 2012). Neither

Plaintiff nor Defendant filed an objection to the report and recommendation, and the time to object has expired.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); *Williams v. Wainwright*, 681 F.2d 732 (11th Cir. 1982). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject, or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. *See Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994); *Castro Bobadilla v. Reno*, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), *aff'd*, 28 F.3d 116 (11th Cir. 1994) (table).

Upon due consideration of the record, including Judge Richardson's report and recommendation, in conjunction with an independent examination of the file, the Court adopts the report and recommendation in all respects. The Court agrees with Judge Richardson's detailed and well-reasoned factual findings and legal conclusions. Consequently, the Commissioner's decision is reversed and remanded.

Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

1. The report and recommendation is **AFFIRMED** and **ADOPTED** and **INCORPORATED BY REFERENCE** into this Order for all purposes, including appellate review.

2. The Commissioner's decision is **REVERSED** and **REMANDED** for further proceedings consistent, pursuant to sentence four of 42 U.S.C. § 405(g). The ALJ is directed to (1) re-evaluate Plaintiff's anemia and cardiomyopathy and reconsider Plaintiff's subjective complaints; (2) re-evaluate Plaintiff's RFC assessment, if necessary; and (3) conduct any further proceedings deemed appropriate.
3. In the event that benefits are awarded on remand, any § 406(b) or § 1383(d)(2) fee application should be filed within the parameters described in the report and recommendation.
4. The Clerk is **DIRECTED** to enter final judgment in favor of Plaintiff and against the Commissioner of Social Security, terminate any pending motions and deadlines, and thereafter close this case.

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 10th day of August, 2020.



TOM BARBER
UNITED STATES DISTRICT JUDGE